

---

**APPEALS BOARD  
UTAH LABOR COMMISSION**

**JEFFREY W. HOLT,**

**Petitioner,**

**vs.**

**GURNEY TRUCKING INC. and  
WORKERS COMPENSATION FUND,**

**Respondents.**

**ORDER AFFIRMING  
ALJ'S DECISION**

**Case No. 03-0214**

---

Both Petitioner and Respondents ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Marlowe's decision regarding Mr. Holt's claim for benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

**BACKGROUND AND ISSUE PRESENTED**

On April 7, 2003, Mr. Holt filed an application for hearing with the Commission to compel Gurney Trucking Inc. and its insurance carrier, Workers Compensation Fund, (referred to jointly as "Gurney" hereafter) to pay medical and disability benefits for cervical and carpal tunnel injuries allegedly caused by an incident that occurred on August 8, 2002, while Mr. Holt was employed as a truck driver by Gurney.

Judge Marlowe held an evidentiary hearing on Mr. Holt's claim on June 4, 2004, and appointed a medical panel to evaluate the medical cause of Mr. Holt's carpal tunnel syndrome.<sup>1</sup> On March 24, 2005, Mr. Holt proffered an additional medical opinion to Judge Marlowe and asked that she submit additional questions to the panel. Judge Marlowe refused to accept the additional medical opinion and also declined to submit the additional questions.

Upon receipt of the medical panel's report, Judge Marlowe concluded that Mr. Holt's injuries were medically caused by his work accident of August 8, 2002. Judge Marlowe ordered Gurney to pay Mr. Holt's medical expenses, together with limited sums of temporary total and permanent partial disability compensation.

In requesting review of Judge Marlowe's decision, Gurney argues that Mr. Holt's description

---

<sup>1</sup> Gurney conceded liability for the work-related aggravation of Mr. Holt's cervical condition. In the absence of any medical dispute regarding the cervical injury, that issue was not referred to the medical panel.

**ORDER AFFIRMING ALJ'S DECISION**  
**JEFFREY W. HOLT**  
**PAGE 2 OF 6**

of his work accident is implausible. For his part, Mr. Holt argues that questions regarding the duration of his temporary total disability and the extent of his permanent partial disability should have been referred to the medical panel.

**FINDINGS OF FACT**

The following facts are material to the issues raised in the parties' motions for review. The Appeals Board also adopts Judge Marlowe's findings of fact to the extent they are consistent with this decision.

Mr. Holt worked for Gurney as a truck driver. As he was driving his truck on an interstate highway on August 8, 2002, the front fuel tank support strap broke loose and the fuel tank dropped to the roadway surface. In order to move the truck out of traffic, Mr. Holt had to raise the fuel tank, which weighed approximately 1,000 pounds. He did that by tying a rope around the tank, placing the rope over the truck's frame, and then hoisting the tank off the pavement. As he did so, he felt pain in his neck, upper back and right arm. He sought medical attention and was diagnosed with cervical spine impingement and severe carpal tunnel syndrome. Mr. Holt underwent carpal tunnel surgery on both arms, on March 4 and April 1, 2003.

Mr. Holt sought workers' compensation benefits for his injuries. Gurney admitted liability for a work-related aggravation of Mr. Holt's cervical spine problems, but denied liability for his carpal tunnel syndrome. On April 7, 2003, Mr. Holt requested an evidentiary hearing on his claim. Judge Marlowe held the hearing on June 4, 2004. At the hearing, the parties submitted written medical opinions from their respective medical experts.

- Mr. Holt's treating physicians expressed the opinion that Mr. Holt's carpal tunnel syndrome was caused by his work exertions on August 8, 2002. However, Mr. Holt did not submit any medical opinion as to the extent of permanent impairment that had resulted from the carpal tunnel syndrome.
- Dr. Knoebel, Gurney's medical consultant, conceded that Mr. Holt suffered from carpal tunnel syndrome but denied that it was work-related. Presumably because Dr. Knoebel did not believe the carpal tunnel syndrome was work-related, he did not assess Mr. Holt's impairment from that condition.

On March 19, 2005, Judge Marlowe issued an interim order that included her findings regarding the facts of Mr. Holt's work accident and referring the question of medical causation of Mr. Holt's carpal tunnel syndrome to an impartial medical panel. Copies of Judge Marlowe's interim order and medical panel referral were mailed to the parties. A few days later, on March 24, 2005, Mr. Holt's attorney wrote Judge Marlowe asking that she also ask the panel to determine the duration of Mr. Holt's temporary disability and the extent of his permanent impairment. In support of this request, Mr. Holt's attorney enclosed a report from Mr. Holt's treating physician, dated January 3, 2005, stating that Mr. Holt had suffered a permanent 6% whole-person impairment from

**ORDER AFFIRMING ALJ'S DECISION**  
**JEFFREY W. HOLT**  
**PAGE 3 OF 6**

his work-related bilateral carpal tunnel syndrome. Judge Marlowe declined to accept the proffered report into evidence on the grounds that Gurney “did not see the report prior to the hearing, and did not have the time nor opportunity to prepare and present any defenses.” Judge Marlowe also declined to submit the additional questions requested by Mr. Holt.

On June 18, 2005, the medical panel submitted its report to Judge Marlowe, in which it concluded that Mr. Holt’s work accident of August 8, 2002, was the medical cause of his carpal tunnel syndrome.

After receiving the panel’s opinion, Judge Marlowe issued a final decision in this matter, concluding that Mr. Holt was entitled to workers’ compensation benefits for his carpal tunnel syndrome. Judge Marlowe therefore ordered Gurney to pay the reasonable expense of medical care necessary to treat that condition, as well as Mr. Holt’s work-related cervical spine injury. Judge Marlowe awarded temporary total disability compensation, but terminated that compensation for periods when Mr. Holt had refused Gurney’s offers of suitable light-duty work. With respect to permanent partial disability compensation, Judge Marlowe awarded such compensation for Mr. Holt’s cervical spine injury, based on an impairment rating provided by Dr. Knoebel. Judge Marlowe awarded no permanent partial disability compensation for Mr. Holt’s carpal tunnel syndrome due to the absence from the evidentiary record of any impairment rating for that condition.

**DISCUSSION AND CONCLUSIONS OF LAW**

Section 34A-2-401 of the Utah Workers’ Compensation Act requires employers or their insurance carriers to pay workers’ compensation benefits to employees injured in work-related accidents. It is the employee’s burden to prove that the injuries are work-related. It is also the employee’s burden to satisfy the statutory requirements that govern eligibility for any particular workers’ compensation benefit, such as temporary disability compensation and permanent partial disability compensation.

Mr. Holt claims benefits for cervical and carpal tunnel injuries from his exertion in hoisting his truck’s fuel tank. While Gurney concedes that the foregoing incident did occur, Gurney argues that Mr. Holt’s description of the incident defies belief. Specifically, Gurney contends it is not humanly possible for an individual to lift 1,000 pounds—the approximate weight of the fuel tank. The Appeals Board notes, however, that the weight attributed to the tank was only an estimate. Furthermore, only the tank’s front support strap broke. Presumably, part of the tank’s weight remained supported by the rear strap. Finally, the manner in which Mr. Holt routed the hoisting rope over the truck’s frame may have provided some mechanical advantage that reduced the force necessary to lift the tank. Thus, although it is not possible to quantify Mr. Holt’s exertion precisely, the Appeals Board does not find his general description of events to be inherently implausible.

There is no question that the injuries caused by Mr. Holt’s work accident are compensable under the workers’ compensation system. However, it remains Mr. Holt’s obligation to establish his

**ORDER AFFIRMING ALJ'S DECISION**  
**JEFFREY W. HOLT**  
**PAGE 4 OF 6**

right to any particular benefit provided by that system. With respect to Mr. Holt's claims for permanent partial disability compensation for his carpal tunnel syndrome, it was his responsibility to submit at hearing some evidence of a permanent impairment resulting from his carpal tunnel syndrome. Mr. Holt offered no such evidence at the hearing. Consequently, no evidentiary basis existed for Judge Marlowe to either award permanent partial disability compensation to Mr. Holt or to refer that issue to the medical panel as a disputed medical question.

The Appeals Board recognizes that on January 3, 2005, seven months **after** the evidentiary hearing, Mr. Holt finally obtained a medical assessment of his permanent impairment. Such a report should have been obtained and submitted prior to the evidentiary hearing. But Mr. Holt failed to proffer the medical assessment until March 24, 2005, more than three months after he received it and after Judge Marlowe had already referred Mr. Holt's claim to a medical panel.

The ultimate objective of the Labor Commission's adjudication system is to insure that injured workers receive the benefits that are due them. But at the same time, rules are necessary to the fair and orderly adjudication of disputes. The Labor Commission's procedural rules provide a reasonable degree of flexibility under appropriate circumstances. But in this case Mr. Holt has not provided any explanation for his untimely submission of the medical evidence that was necessary to his claim. To the contrary, the record establishes that Mr. Holt did not obtain the evidence in time for the evidentiary hearing. When he did obtain the evidence, he failed to submit it for another three months. Mr. Holt's conduct precludes the Appeals Board from finding cause to permit the untimely submission of the evidence in question. The Appeals Board therefore affirms Judge Marlowe's limited award of permanent partial disability compensation.

The final issue before the Appeals Board is Mr. Holt's argument that the medical panel should have been asked to determine when he reached medical stability. Ordinarily, an injured worker's right to temporary total disability compensation continues until the date of medical stability. However, there is an exception to that rule. Section 34A-2-410 of the Utah Workers' Compensation Act permits termination of temporary total disability compensation prior to the date of medical stability if the injured worker unjustifiably refuses an offer of appropriate light-duty work.

In this case, the record establishes that Gurney offered Mr. Holt appropriate light-duty work from March 24 to April 1, 2003, and again after April 16, 2003. Mr. Holt rejected Gurney's offers of light-duty work for personal reasons unrelated to the suitability of the offered work. The Appeals Board therefore concurs with Judge Marlowe's determination that Mr. Holt was not entitled to benefits between March 24 and April 1, 2003, or after April 16, 2003.

**ORDER**

**ORDER AFFIRMING ALJ'S DECISION**  
**JEFFREY W. HOLT**  
**PAGE 5 OF 6**

The Appeals Board affirms Judge Marlowe's decision. It is so ordered.

Dated this 28<sup>th</sup> day of October, 2008.

---

Colleen S. Colton, Chair

---

Patricia S. Drawe

---

Joseph E. Hatch

**NOTICE OF APPEAL RIGHTS**

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.

**ORDER AFFIRMING ALJ'S DECISION**  
**JEFFREY W. HOLT**  
**PAGE 6 OF 6**